

informal drawings and that formal drawings will be required when the application is allowed.

The Examiner noted that the form PTO-1449 paper supplied with the Information Disclosure Statement filed July 7, 2000 became separated from the application and requested a duplicate.

The Examiner rejected claims 29 and 30 under 35 U.S.C. § 112, second paragraph, as being indefinite. Claims 1-15, 25, and 32-34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Freese U.S. patent No. 5,273,277 (hereinafter "Freese") in view of Schall U.S. patent No. 2,323,624 (hereinafter "Schall"). Claims 16-22, 36-39, and 63 were rejected under 35 U.S.C. § 103(a) as being obvious over Freese in view of Schall and further in view of Garver U.S. patent No. 3,529,823 (hereinafter "Garver"). Claim 23 was rejected under 35 U.S.C. § 103(a) as being obvious over Freese in view of Schall and Garver and further in view of Setten U.S. patent No. 3,623,725 (hereinafter "Setten"). Claim 24 was rejected under 35 U.S.C. § 103(a) as obvious over Freese in view of Schall and Garver and further in view of Fraser et al. U.S. patent No. 5,746,667 (hereinafter "Fraser"). Claims 26-31 were rejected under 35 U.S.C. § 103(a) as obvious over Freese in view of Schall and further in view of Culpepper U.S. patent No. 3,861,679 (hereinafter "Culpepper"). Claims 40-46 were rejected under 35 U.S.C. § 103(a) as obvious over Freese in view of Schall and further in view of Myers U.S. patent No. 3,893,669 (hereinafter

"Myers"). Claims 59, 60, and 62 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Freese in view of Schall. Claim 61 was rejected under 35 U.S.C. § 103(a) as obvious over Freese in view of Schall and further in view of Culpepper.

Objection To The Drawings
Under 37 C.F.R. § 1.83(a)

The Examiner objected to the drawings under 37 C.F.R. § 1.83(a). The drawings must show every feature of the invention specified in the claims. The Examiner contends that the spring claimed in claim 33 must be shown or the feature cancelled from the claim.

Applicants have added FIG. 8a to the enclosed replacement drawing sheet 10. FIG. 8a shows the apparatus of FIG. 8 with the addition of spring element 33 attached between hinge 20 and member 15. The addition of spring element 33 is fully supported at page 7, lines 9-11 of the original specification where it states that "a spring element (not shown) can be attached between hinge 20 and member 15."

Therefore, the spring claimed in claim 33 is now shown in the drawings and applicants request that the objection to the drawings be withdrawn.

Formal Drawings

The Examiner noted that the application was filed with informal drawings and that formal drawings will be required when

the application is allowed. Applicants, however, submitted formal drawings on October 11, 2000. The Examiner is invited to state in the next communication whether the formal drawings submitted on October 11, 2000 were received.

Duplicate Form PTO-1449

The Examiner noted that the form PTO-1449 paper supplied with the Information Disclosure Statement filed July 7, 2000 became separated from the application and requested a duplicate. Applicants are submitting herewith a duplicate of the form PTO-1449 that was supplied with the Information Disclosure Statement filed on July 27, 2000.

Amendments To The Specification

Applicants have amended the specification to include references to FIG. 8a, which has been added to overcome the objection to the drawings under 37 C.F.R. § 1.83(a). The amendments do not add any new matter and are fully supported and justified by the specification.

Claim Rejections
Under 35 U.S.C. § 112

The Examiner rejected claims 29 and 30 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

The Examiner asserts that the term "ball-and-socket" used in claim 29 is indefinite and vague. In claim 29, it is stated that "said upper and lower portions are attached together using a ball-and-socket type fastener." The term ball-and-socket, however, is well known and can be found in a dictionary. For example, Merriam-Webster's Collegiate Dictionary (10th ed. 1998) defines a "ball-and-socket joint" as a joint in which a ball moves within a socket so as to allow rotary motion in every direction within certain limits. Furthermore, the reference Schall, which the Examiner relies upon, states that its disclosed swivel mounting unit "includes a ball and socket connection" (see column 1, lines 1-9 of Schall). Accordingly, applicants request that the rejection of claim 29 under 35 U.S.C. § 112, second paragraph, be withdrawn.

The Examiner asserts that the term "cylinder-and-socket" used in claim 30 is indefinite and vague. This is not so. A cylinder-and-socket type fastener is defined on page 7, lines 18-26 of applicants' specification and is illustrated in FIG. 3. FIG. 3 illustrates a cylinder 27 and a socket 28 arranged as a cylinder-and-socket type fastener. Accordingly, because the term "cylinder-and-socket" is explicitly defined and illustrated in applicants' specification and FIGS., applicants request that the rejection of claim 30 under 35 U.S.C. § 112, second paragraph, be withdrawn.

Rejections Of Claims 1-46
Under 35 U.S.C. § 103(a)

The Examiner rejected claims 1-15, 25, and 32-34 under 35 U.S.C. § 103(a) as being unpatentable over Freese in view of Schall. Claims 16-22 and 36-39 were rejected under 35 U.S.C. § 103(a) as being obvious over Freese in view of Schall and further in view of Garver. Claim 23 was rejected under 35 U.S.C. § 103(a) as being obvious over Freese in view of Schall and Garver and further in view of Setten. Claim 24 was rejected under 35 U.S.C. § 103(a) as obvious over Freese in view of Schall and Garver and further in view of Fraser. Claims 26-31 were rejected under 35 U.S.C. § 103(a) as obvious over Freese in view of Schall and further in view of Culpepper. Claims 40-46 were rejected under 35 U.S.C. § 103(a) as obvious over Freese in view of Schall and further in view of Myers.

The Examiner's rejections are respectfully traversed.

Claim 1

As specified by claim 1, applicants' invention is directed towards a ball hitting practice apparatus. The apparatus includes a substantially rigid member having a first and a second end. A ball mounting assembly is suspended from the second end of the substantially rigid member. A hinge that can be suspended from a frame is attached at or near the first end of the substantially rigid member. The hinge is arranged such that the substantially rigid member rotates about a substantially

horizontal axis. This arrangement, for example, enables a ball attached to the ball mounting assembly to simulate a number of different types of pitches. The Examiner is invited to watch a short promotional video on the enclosed video tape to see an illustrative ball hitting practice apparatus in use and the benefits thereof.

Freese discloses a ball hitting training device with a horizontal hitting guide. Above the hitting guide, a ball is secured to flexible cable 58. The flexible cable is attached to and suspended from loop 54 of support element 50. The flexible cable is swingably secured to loop 54 using clevis 56.

Schall discloses a swivel mounting unit for punching bags. The swivel unit includes a ball and socket connection that provides for a limited range of movement in any direction radially out of the axis of the swivel (see column 1, lines 1-18 of Schall). The design attempts to prevent the swivel from rattling and from becoming noisy in operation.

Neither Freese nor Schall discloses or suggest a rigid member as defined in claim 1. The Examiner asserts that plastic tube 74 of Freese is a rigid member. Contrary to the Examiner's assertion, plastic tube 74 merely protects the flexible cable in the event that a batter accidentally strikes the cable during a practice swing. The plastic tube provides no other function than to be a flexible sheath that protects the flexible cable and bat in case of contact. The plastic tube is positioned around the flexible cable and is not secured thereto. In contrast,

applicant's substantially rigid member, as defined by claim 1, is attached at or near a first end to a hinge. A second end of the substantially rigid member is attached to a ball mounting assembly. Accordingly, the combination of Freese and Schall fails to disclose or suggest a substantially rigid member (a) that is attached at or near a first end to a first hinge and (b) from which a ball mounting assembly is suspended from a second end as defined in claim 1.

Moreover, the combination of Freese and Schall fails to disclose or suggest a hinge that is arranged such that the substantially rigid member rotates about a substantially horizontal axis as defined in claim 1.

Accordingly, for at least these reasons, claim 1 is allowable over the combination of Freese and Schall. Therefore, applicants request that the rejection of claim 1 be withdrawn.

Claims 2-46

Claims 2-46 were variously rejected under 35 U.S.C. § 103(a). In view of the foregoing, independent claim 1, from which claims 2-46 depend, is allowable, and therefore claims 2-46 are allowable. Accordingly, applicants request that the rejections of claims 2-46 be withdrawn.

Rejections Of Claims 59-63
Under 35 U.S.C. § 103(a)

The Examiner rejected claims 59, 60, and 62 under 35 U.S.C. § 103(a) as being unpatentable over Freese in view of Schall. Claim 61 was rejected under 35 U.S.C. § 103(a) as obvious over Freese in view of Schall and further in view of Culpepper. Claim 63 was rejected under 35 U.S.C. § 103(a) as being obvious over Freese in view of Schall and further in view of Garver.

The Examiner's rejections are respectfully traversed.

Applicants' invention, as defined by claim 59, is directed towards a ball hitting practice apparatus for use by a hitter. The apparatus includes a frame comprising a base, a substantially vertical support structure secured to the base, and a substantially horizontal support structure that is secured to the substantially vertical support structure. A hinge is secured near a second end of the substantially horizontal support structure. The apparatus includes a substantially rigid member having an upper and a lower portion. The upper portion is secured to the hinge such that the lower portion rotates about a horizontal axis. A ball mounting assembly is suspended from the lower portion.

As discussed above, the combination of Freese and Schall fails to disclose or suggest (a) an upper portion of a substantially rigid member that is secured to a hinge such that the lower portion rotates about a horizontal axis and (b) the

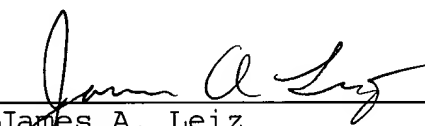
suspension of a ball mounting assembly from the lower portion of a substantially rigid member.

At least because these elements of claim 59 are not disclosed or suggested by the combination of Freese and Schall, claim 59 and dependent claims 60-63 are allowable. Accordingly, applicants request that the rejections of claims 59-63 be withdrawn.

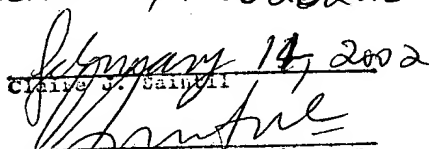
Conclusion

In view of the foregoing, claims 1-46 and 59-63 are in condition for allowance. This application is therefore in condition for allowance. Reconsideration and allowance of the application are respectfully requested.

Respectfully submitted,


James A. Leiz
Reg. No. 46,109
Agent for Applicants
FISH & NEAVE
Customer No. 1473
1251 Avenue of the Americas
New York, New York 10020-1104
Tel. (212) 596-9000

I Hereby Certify that this
Correspondence is being
Deposited with the U.S.
Postal Service as First
Class Mail in an Envelope
Addressed to ASSISTANT
COMMISSIONER FOR
PATENTS, P.O. Box 2327
ARLINGTON, VA. 22202 on


Claire J. Samoil

Signature of Person Signing



APPENDIX

(Showing How The Specification
Has Been Amended)

In The Specification

Please add the following paragraph after the paragraph that begins at page 5, line 28 and ends at page 5, line 31:

FIG. 8a is a front partial elevational view of another illustrative embodiment of the ball hitting practice apparatus shown in FIG. 2, taken from line 8-8 of FIG. 2 according to the present invention.

Please replace the paragraph that begins at page 12, line 7 and ends at page 12, line 14 with the following amended version of that paragraph:

Hinge 20 can be constructed to provide member 15 limited motion out of vertical plane 11 as well. For example, [a] spring element [(not shown)] 33 can be attached between hinge 20 and member 15 as shown in FIG. 8a or within bottom part 22 itself. Such out-of-plane motion may be desirable to prevent injury if a person bumps into member 15 in a direction that is out of vertical plane 11.

RECEIVED
FEB 26 2002
10:37 AM
MAIL ROOM

A